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21 October 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

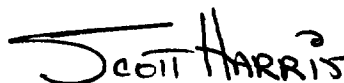
Re: 1998 Biennial Regulatory Review—Review of International Common
Carrier Regulations, IB Docket No. 98-118—*Notice of Ex Parte
Presentation*

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's rules, Tyco Submarine Systems Ltd. ("TSSL") hereby notifies the Commission of a written *ex parte* presentation in the above-referenced proceeding. The attached letter was delivered by TSSL's counsel to the following FCC officials: Regina Keeney, Troy Tanner, Diane Cornell, Joanna Lowry, George Li, and Doug Klein.

Please contact me with any questions regarding this filing.

Respectfully submitted,



Scott Blake Harris
Counsel for Tyco Submarine Systems Ltd.

cc: Regina Keeney
Troy Tanner
Diane J. Cornell
Joanna Lowry
George S. Li
Douglas Klein

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21 October 1998

Hand Delivery

Ms. Regina Keeney
Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 800
Washington, D.C. 20554

Re: 1998 Biennial Regulatory Review—Review of International Common
Carrier Regulations, IB Docket No. 98-118 ✓

Dear Ms. Keeney:

On behalf of Tyco Submarine Systems Ltd. ("TSSL"), we would like to address a number of concerns raised in the reply comments regarding submarine cable systems. In particular, TSSL notes that the Commission's proposals fully accommodate the national security and law enforcement interests identified by the Federal Bureau of Investigation ("FBI").¹ First, the Commission has *always* been mindful of—and shown deference to—the national security and law enforcement concerns of the Executive Branch. Second, the Commission has in no way proposed to modify the procedures or standards used in evaluating the impact of submarine cable construction and services on national security and law enforcement. It has merely moved to eliminate a regulatory safeguard that, in the emerging market for international communications, serves only to limit competition.

¹ See *In the Matter of 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations, Notice of Proposed Rulemaking*, IB Docket No. 98-118 (rel. July 14, 1998) ("NPRM"); Reply Comments of the Federal Bureau of Investigation, IB Docket No. 98-118, at 8-9 (filed Aug. 28, 1998).

By eliminating the presumption against non-U.S.-licensed submarine cable systems, the Commission would not hinder the ability of the Executive Branch—including the FBI—to raise national security or law enforcement concerns regarding the use of those cable systems. As the Commission specifically said:

If it becomes necessary to prohibit the use of any specific cable system (whether one that lands on U.S. shores or not), we may add it to the exclusion list²

While the Commission noted that such exclusions would take place “only in the most imperative of circumstances,”³ obviously those circumstances include the expression of national security and law enforcement concerns. The Commission’s proposal thus accommodates—as it should—the national security and law enforcement concerns identified by the FBI.⁴

Nor does the Commission’s proposal favor non-U.S.-licensed systems over U.S.-licensed ones. The Commission’s proposal eliminates a discriminatory and anticompetitive provision in its existing rules.⁵ The presumption against the use of non-U.S.-licensed submarine cable systems is inconsistent with other pro-competitive and deregulatory actions recently taken by the Commission with respect to international services.⁶ Moreover, the exclusion list and the presumption may well violate the international obligations of the United States, as undertaken in the General Agreement on Trade in Services and the World Trade Organization Agreement on Basic Telecommunications, by applying disparate licensing criteria to non-U.S.-licensed submarine cable systems.⁷

² NPRM, ¶ 26.

³ *Id.*

⁴ *See* FBI Reply Comments, at 9.

⁵ *See* Comments of Tyco Submarine Systems Ltd., IB Docket No. 98-118, at 2-3 (filed Aug. 13, 1998).

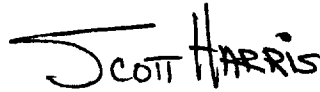
⁶ *See id.*

⁷ *See id.* at 3 n.4.

Ms. Regina Keeney
21 October 1998
Page 3

In sum, the Commission's proposal does not impinge on the requirement that the Commission obtain the consent of the Executive Branch prior to licensing submarine cable construction and services, or preclude the Executive Branch from raising national security or law enforcement concerns regarding carriers' use of non-U.S.-licensed submarine cable systems. Instead, it removes a competitive safeguard that no longer serves the interest of competition on international routes.

Respectfully submitted,

A handwritten signature in black ink that reads "SCOTT HARRIS". The signature is stylized, with a large, sweeping initial "S" and the name "HARRIS" in all caps.

Claire L. Calandra
Vice President and General Counsel
Tyco Submarine Systems Ltd.

Scott Blake Harris
Kent D. Bressie
Counsel for Tyco Submarine Systems Ltd.

cc: Diane J. Cornell
Troy Tanner
Joanna Lowry
George S. Li
Douglas Klein